



COUNTY OF YOLO

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May 6, 2011
VIA E-MAIL ONLY

Ms. Terry Macaulay
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: Comments of Yolo County—Third Draft of the Delta Plan

Dear Ms. Macaulay:

This letter provides the comments of the Yolo County Board of Supervisors on the April 22, 2011 “Third Staff Draft Delta Plan” (the “Third Draft”). The letter is organized in the same manner as the Third Draft and utilizes headings that identify the specific policies and recommendations at issue.

While the County believes that the Third Draft is improved from the Second Draft, it still contains troubling policies and recommendations. The addition of problem statements and other descriptive language is helpful, but many of the directives are still vague and overly broad. The following comments attempt to address specific issues throughout the Third Draft, as well as recognize changes in response to Yolo County’s comments in previous letters.

Comments on Chapter 1 **“The Delta Plan”**

Thank you for adding information about Delta agriculture to the discussion of “What the Delta Plan Will Achieve by 2100”, as well as information related to the goal of “protect[ing] and enhance[ing] the unique cultural, recreational, and agricultural values of the California Delta as an evolving place.” (Third Draft at pp. 12.). Yolo County further requests that the Council add a sentence to the end of this final bullet in this section, as follows, “State and federal agencies have worked together with local government to develop processes through which impacts of proposed solutions to Delta issues are minimized and where unavoidable, are fully mitigated.”

While Yolo County appreciates the addition of language related to the economic sustainability plan in the discussion on page 16 regarding the inclusion of other plans, Yolo County continues to request that the Delta Plan emphasize that the Council is not merely authorized but *required* to incorporate the recommendations of the economic sustainability plan into the Delta Plan if certain findings are made. (Public Resources Code § 29773.) The discussion regarding inclusion

of the Bay-Delta Conservation Plan references and describes existing law, so the discussion of inclusion of the economic sustainability plan should also reference and describe existing law.

In addition, Yolo County encourages the Council to clarify in this section that adopted HCP/NCCPs are exempt from the Delta Plan. In Chapter 3 on page 37, the Delta Plan indicates that certain actions, including the issuance of a California Endangered Species Act (CESA) permit, are exempt from the definition of a “covered action” and therefore not subject to the regulatory policies of the Delta Plan. One or more of these permits has been or will be issued upon the State’s approval of each of the Delta County HCP/NCCPs. As a result, the language in Chapter 3 could be interpreted to mean that approved HCP and NCCPs, by virtue of the issuance of one or more of the aforementioned state permits, is statutorily exempt from Delta Plan policies. We further assume that individual actions undertaken pursuant to the approved HCP/NCCP will not require additional consistency findings under the Delta Plan. Yolo County supports the exemption of all adopted HCP/NCCPs from the Delta Plan, not just HCP/NCCPs adopted prior to the completion of the Delta Plan.

Yolo County also requests an exemption for the Yolo Bypass Wildlife Area Land Management Plan. The Yolo Wildlife Area comprises 16,700 acres in the Yolo Bypass, the majority of which is within the legal Delta. The California Department and Fish and Game (DFG) and the Yolo Basin Foundation developed the plan to, among other things, guide the management of habitats, species, and appropriate public uses to achieve the DFG’s mission and to provide the environmental documentation necessary to comply with state and federal statutes and regulations. The CEQA document is signed by the DFG’s Region 3 Manager. The Plan is the result of many years of work with agencies and stakeholders and should not be compromised by another layer of state agency oversight.

Finally, Yolo County also continues to urge the Council to include language in the Plan emphasizing that the working landscape of the Delta *currently* provides valuable habitat for a wide variety of species, including migratory waterfowl and a diverse array of endangered, threatened, and other special status species covered by local Habitat Conservation Plan (“HCP”) and Natural Community Conservation Plan (“NCCP”) efforts and other local plans, such as the Yolo Bypass Wildlife Area Land Management Plan.

Comments on Chapter 2

“Science and Adaptive Management for a Changing Delta”

Thank you for revising this chapter to reflect the limited scope of the “adaptive management” mandate in Water Code § 85308(f), which states that the adaptive management strategy to be included in the Delta Plan is confined to “ongoing ecosystem restoration and water management decisions.”

Yolo County continues to request clarification of the statement on page 25, “formal decision making is the responsibility of the Council and all other processes should be structured to provide strong support for Council decisions.” It is unclear what this means. This language should be deleted or clarified. Similarly, the paragraph titled “Effective Governance” on page 31

is unclear. Chapter 3 does little to illuminate the Council's intent. Will the Council provide advice to project proponents on "governance" of their projects to ensure adequate adaptive management? The Council's intent for this Section should be described more clearly.

Yolo County also requests that, if the Bay-Delta Conservation Plan is incorporated into the Delta Plan, any significant adaptive management changes related to individual Bay-Delta Conservation Plan projects are approved by the Council and relevant local governments are consulted.

Comments on Chapter 3
"Governance: Implementation of the Delta Plan"

Yolo County appreciates the extensive work to clarify the process in Chapter 3. Yolo County's most significant concern continues to be with the administrative burden on project proponents of "covered actions," especially small projects. Yolo appreciates the effort to limit the items a certification of consistency must cover, but urges the Council to consider a threshold that will exempt small development projects, especially agricultural or other economic development projects. Alternatively, the Council could clearly identify the projects for which certifications of consistency should be submitted to the Council to meet the goals of the Act, rather than issuing blanket policies. Yolo County also further urges Council staff to work with local government officials to further streamline the process through which agencies provided certifications of consistency.

Yolo County also requests the deletion of the language on lines 28-31 related to preventing actions that may preclude the future implementation of projects that meet the requirements of the Act, including "restoration of certain lands uniquely suited to habitat." As stated elsewhere in this letter, it is inappropriate for the Council to infer positions on future habitat projects.

Yolo County urges the Council to exempt ministerial actions that are exempt under CEQA (p. 36, lines 35-38). Local governments do not have the resources to provide information to the Council for certifications of consistency for each of these actions, nor does the Council need to review them to meet the goals of the Delta Plan.

As discussed in the Chapter 1 comments, Yolo County requests clarification in this Chapter that all Delta HCP/NCCPs are exempt from the Delta Plan. Yolo County also urges the Council to exempt the Yolo Wildlife Area Land Use Management Plan.

Comments on Chapter 4
"A More Reliable Water Supply for California"

Yolo County appreciates the elimination of the policies that established moratoriums on covered actions if certain conditions are not met. Yolo County has some questions about the revised policies in Chapter 4, however.

WR P1, WR P2, WR P3: This policy needs significant clarification. Are existing in-Delta water diversions for agricultural or other uses considered "covered actions" for the purpose of this

policy or just “new” diversions? What will the impact be on farmers who currently divert water through a reclamation district? If there is a new agricultural, in-Delta water intake for a farmer, how will the Council determine whether the need for this project is “significantly caused” by the water-using region’s failure to comply with WRP1, WRP2, and WRP3? There does not appear to be any threshold for applying these policies. Application of these policies to small farmers – such as winegrape growers in the Clarksburg area - will further hamper existing and potential agricultural activities in the Delta. Finally, will the Water Sustainability Element include groundwater? If so, how does the Sustainability Element relate to the sustainable groundwater management plans?

Comments on Chapter 5 **“Ecosystem Restoration”**

In its March 11, 2011 comment letter on the First Staff Draft of the Delta Plan and in the April letter on the Second Draft, the County raised several concerns with the Ecosystem Restoration chapter. Briefly, those concerns were: (a) the lack of any discussion of the tradeoffs inherent in ecosystem restoration, including potential impacts on agriculture and related economic impacts; (b) the lack of relevant discussion of certain goals, such as promoting viable populations of native resident and migratory species, establishing migratory corridors, and reducing threats and stressors; (c) the lack of consideration of local HCPs and NCCPs and other local plans, such as the Yolo Natural Heritage Program and the Yolo Wildlife Area Land Use Management Plan; and (d) the lack of any significant discussion of terrestrial species and their habitats, including the habitat values of farmland and open space. These concerns remain applicable to the narrative of the Ecosystem Restoration chapter in the Third Draft.

ER P4: The lack of any mention of agriculture in this policy is startling. Why is the Council focusing on ecosystem restoration to the exclusion of agriculture, rather than trying to balance the two uses where appropriate?

ER P5: The language in this policy, as well as the similar RR-P2, is unacceptable to Yolo County. The only area within Yolo County shown in Figures 4 and 5 of the Draft Ecosystem Restoration Program’s Conservation Strategy for Stage 2 Implementation for the Sacramento-San Joaquin Delta Ecological Management Zone appears to be the Yolo Bypass. As such, this policy would prohibit the County from taking any future actions that substantially reduce opportunities for ecosystem restoration, habitat creation, channel modification for ecosystem benefit, or increased connectivity between water and land without any information about what projects the Council is attempting to protect. Given the County’s history of balancing existing uses in the Bypass, this policy seems especially inappropriate. In the absence of a clear, specific, and significant need for such a policy, it should be deleted. Please refer to Yolo County’s comments on RR-P2 for more information about the need for the Council to avoid biasing discussions about projects in the Bypass that involve the careful balancing of uses.

Comments on Chapter 6 **“Improve Water Quality to Protect Human Health and the Environment”**

The County has no comments on this chapter at the present time.

Comments on Chapter 7
“Reduce Delta Flood Risk to People, Property, and State Interests”

Yolo County appreciates the many changes the Council made to this chapter from the Second Draft, but the Third Draft continues to contain vague directives that greatly intrude on local land use authority without sufficient accompanying demonstration of reason or need. The following policies and recommendations are of significant concern to the County:

Policies

RR-P2: This policy should either be deleted or significantly revised. Since the Yolo Bypass is specifically mentioned in this policy, Yolo County strongly reiterates its’ request for the Council to define “floodplains shall not be encroached upon or diminished” and “existing or potential value of floodplains,” as described in our letter on the Second Draft. The Yolo Bypass is a nationally-recognized flood management success story, thanks in large part to the leadership of local government, farmers, and non-profit organizations. This policy, without further clarification, appears to potentially prevent changes to the Bypass to support the existing uses of agriculture, wetlands habitat, and endangered terrestrial species habitat - perhaps to protect the potential implementation of a project to flood the Bypass more frequently for splittail and salmon? Yolo County is working with the Resources Agency and other stakeholders to identify a potential fish habitat project that is compatible with existing uses, but the Delta Plan should not favor one use of the Bypass over other allowable uses. Nothing in this policy should prevent the construction of necessary infrastructure to continue agriculture in the Bypass, for example.

RR-P4: This policy is confusing and needs significant work. Are “actions” covered actions? Does this policy mean, for example, that rural residential uses in populations of less than 10,000 have to achieve 100-year protection by 2015? Or does it mean that no development – including agricultural economic development – can occur in these areas after 2015 if the levees are not upgraded? It is unlikely that Yolo County or the town of Clarksburg will have sufficient funds to upgrade the town’s levees to a 100-year level of flood protection – ever. The town is only 500 people and the community and the County do not have sufficient resources to cover a local match. At the same time, there may be a need for some limited economic development activities to maintain the viability of this small community. For agricultural areas, what will be allowed or not allowed if the levees do not meet the DWR nonurban design criteria? In other words, what exactly is the Council requiring with this policy?

RR-P5: This policy needs further clarification. Yolo County contains 215 miles of Sacramento River Flood Control Project levees, so Yolo County’s recently adopted General Plan contains updated levee setback policies. This type of specificity is needed in the Delta Plan. Yolo County’s adopted levee setback policies are as follows:

Action HS-A14 - Require a minimum 50-foot setback for all permanent improvements from the toe of any flood control levee. (Policy HS-2.2)

Action HS-A15 - Restrict proposed land uses within 500 feet of the toe of any flood control levee, including but not limited to the items listed below, unless site-specific engineering evidence demonstrates an alternative action that would not jeopardize public health or safety:

- Prohibit permanent unlined excavations;
- Large underground spaces (such as basements, cellars, swimming pools, etc) must be engineered to withstand the uplift forces of shallow groundwater;
- Prohibit below-grade septic leach systems;
- Engineered specifications for buried utility conduits and wiring;
- Prohibit new water wells;
- Prohibit new gas or oil wells;
- Engineered specifications for levee penetrations; and
- Require landscape root barriers within 50 feet of the toe. (Policy HS-2.2)

RR-P6: The bullet related to no increase in the number of people at risk is unrealistic. A hypothetical example: if the state proposes to spend \$100 million on a 10-mile ring levee around the town of Clarksburg, the Council is not going to let the town grow by the 34 homes slated in Yolo County's General Plan over the next 20 years? Does "increase in number of people at risk" include people working in non-residential structures? If so, then this policy could also further hamper agricultural or other economic development activities in rural areas. Yolo County has directed growth away from floodplains for decades, so urges the Council to carefully craft such policies to minimize the impact on legacy communities - especially in jurisdictions that do not direct significant growth to these communities - and minimize the impact on agricultural economic development activities.

Recommendations

RR R3: Yolo County strongly supports these emergency preparedness recommendations, especially the implementation of the Delta Multi-Hazard Coordination Task Force recommendations.

RR R6: Yolo County is willing to engage in discussions about the creation of a Delta Flood Management Assessment District, but urges the Council to recognize the complexities of such an endeavor and the need for significant public outreach. If the effort is not done right, the result could be another layer of bureaucracy in an already inefficient flood management system. Any assessment district should also assess other beneficiaries who do not reside in the Delta, such as beneficiaries of levee improvements to protect the state's water supply.

Comments on Chapter 8

"Protect and Enhance the Unique Cultural, Recreational, Natural Resources, and Agricultural Values of the California Delta as an Evolving Place."

Although expanded from the Second Draft, Chapter 8 continues to lack substance and provides a seriously inadequate foundation to achieve the goal of “protect[ing] and enhance[ing] the unique cultural, recreational, and agricultural values of the California Delta as an evolving place.” Given the ambitious timetable for completion of a Draft Delta Plan for environmental review, the County remains concerned that the “Delta as a Place” chapter will remain incomplete and ineffectual at best.

Recommendations

Yolo County appreciates the removal of the policies effectively creating a moratorium on covered actions until after the Delta Protection Commission completes the economic sustainability plan. With regard to the new recommendations in Chapter 8, Yolo County offers the following comments:

DP-R2 and DP-R3: These recommendations have been significantly weakened from the Second Draft, which is disappointing given the enormous importance of these recommendations to protecting and enhancing the Delta as an evolving place. The Council’s ability to implement many of the policies and recommendations proposed in previous chapters depends on the districts and local governments that are negatively affected by the loss of property tax or other revenue from either land removed from property tax rolls or diminishing economic productivity. For this reason, the Council should definitively state that funding for implementation of the Economic Sustainability Plan and a reliable, sustainable funding source for reasonable payments in lieu of taxes are critical to the implementation of the Delta Plan. The Council should return to its’ original recommendations on these two issues in the Second Draft.

The County also continues to urge the Council to make the implementation of a system of payments in lieu of taxes a mandatory prerequisite to any significant ecosystem restoration or water supply project. There is no legal or equitable reason for local governments in the Delta to effectively subsidize projects that sustain agricultural activities and urban development in other parts of the state. Payments in lieu of taxes should simply be a component of the cost of such projects. This is a very important issue to the County—which is currently owed over \$1 million by the state Department of Fish and Game for 10 years of unpaid payments in lieu of taxes for lands within the Yolo Bypass Wildlife Area.

DP-R4: Yolo County supports this recommendation regarding safe harbor agreements.

DP-R5: Refer to previous comments on RR R6.

DP-R7: This policy needs work. What is the definition of a “major gateway?” Does it include structures? Given the significant restrictions on development in the Delta, is the development of major gateways to promote the Delta’s identity even possible? Is the Council willing to streamline the process through which proponents develop major gateways?

New recommendations: Yolo County respectfully requests that the Council add the following two recommendations to the Delta Plan:

- Promote sustainable development within the existing, designated growth boundaries of legacy communities consistent with the Economic Sustainability Plan by allowing for infrastructure improvements and mixed uses, including farm worker housing and agriculture/tourism related businesses.
- Support local Agricultural District programs that enhance the distinctive farming and recreational character of unique areas within the Delta by encouraging agricultural business development and expansion, including food processing, farm sales and agricultural tourism, through the use of programs such as targeted regulatory streamlining, financial incentives, and specialized marketing efforts.

Performance Measures

The performance measures need significant work. The first three items listed are milestones, not performance measures. As for the rest, gross revenue from agriculture is not the best performance measure. As farmers plant more wine grapes, Delta agriculture could increase in value while experiencing a decrease in overall acreage. It is also not clear how the Council would measure revenue from tourism and recreation. Does this revenue include Secondary Zone economic impacts, such as Raley Field? Also “undeveloped open space” may be subject to a wide variety of interpretations. Does that mean fallow land, habitat, or unused land in general?

Comments on Chapter 9 **“Finance Plan Framework to Support Coequal Goals”**

Yolo County strongly reiterates our position that Yolo County should not be negatively impacted by solutions to Delta issues, such as the proposed Yolo Bypass Conservation Measure, that do not benefit the County or its residents. The payment of fees in lieu of taxes for land transferred from the property tax rolls is not sufficient to compensate for potential impacts. Yolo County has directed growth to cities (and away from floodplains), as well as protected agricultural land and open space, for over a century. The County cannot afford any further financial strain resulting from its efforts to undertake responsible land use planning and encourage agricultural land and habitat preservation.

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The Yolo County Board of Supervisors appreciates the opportunity to provide comments on the Third Draft of the Delta Plan.

Sincerely,

A handwritten signature in black ink that reads "Matt Rexroad". The signature is written in a cursive, slightly slanted style.

Matt Rexroad, Chair
Yolo County Board of Supervisors